

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **People of MI v Scott Michael Stasevich**  
Docket No. **282022**  
L.C. No. **2004-002890-FH**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),  
orders:

The delayed application for leave to appeal from the October 10, 2007 order amending the January 7, 2005 judgment of sentence is DISMISSED for lack of jurisdiction. Under MCR 6.428, a circuit court may reissue a judgment of sentence when the ineffective assistance of an attorney, whether appointed or retained, prevented a criminal defendant from perfecting a timely appeal of right. Since appellant pleaded guilty plea to a crime that occurred after December 27, 1994, he did not have the right to claim an appeal of right. MCR 7.203(A)(1)(b). If appellant lacked the ability to claim an appeal, it follows that the Macomb Circuit Court also lacked the authority under MCR 6.428 to reinstate something that appellant never had. Moreover, this Court lost jurisdiction to hear any direct appeal from the January 2005 judgment when appellant's initial appellate attorney failed to file a delayed application for leave to appeal within 12 months of the entry of the January 2005 judgment. See, e.g., *People v Sconious*, 448 Mich 643, 645-646; 532 NW2d 840 (1995) (this Court lost jurisdiction when appellate counsel failed to file a delayed application for leave to appeal within the prior 18-month time limit). In which case, the circuit court cannot use MCR 6.428 to give this Court jurisdiction where none exists. *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992). If appellant believed his initial appellate attorney rendered ineffective assistance by failing to file a timely appeal, he had to file a motion for relief from judgment under MCR 6.500 *et seq.*, not a motion to reinstate. See MCR 6.501.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 12 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk